

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

Rylan Brantl,)
)
 Plaintiff,)
)
 v.) Case No. 2:18-CV-04130-MDH
)
 The Curators of the University of Missouri,)
)
)
 Defendant.)

**DEFENDANT’S SUGGESTIONS IN OPPOSITION TO PLAINTIFF’S MOTION
FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Defendant The Curators of the University of Missouri (the “University”) offers the following suggestions in opposition to Plaintiff’s Motion for Leave to File an Amended Complaint:

Plaintiff requests leave to amend his Complaint to plead “sufficient facts” that the University is not entitled to Eleventh Amendment Immunity. See Plaintiff’s Motion for Leave to Amend, ¶1 (Document 11.) Plaintiff also requests leave to amend to “possibly add a federal claim.” Id. at ¶3.

This Court has discretion in determining whether to grant leave to amend a pleading. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330-32 (1971). Although leave to amend is “freely” granted, such leave is not automatic. “The liberal amendment rules of Fed.R.Civ.P. 15(a) do not require that courts indulge in futile gestures.” Holloway v. Dobbs, 715 F.2d 390, 392–93 (8th Cir. 1983) (citation omitted). The objective of the judicial process is “to secure the just, speedy, and inexpensive determination of every action. See Fed. R. Civ. P. 1.

As a preliminary matter, this Court should deny Plaintiff's Motion for Leave to Amend because Plaintiff has failed to comply with Local Rule 15.1, which provides that a party filing a motion to amend must "set forth a concise statement of the amendment or leave sought," and "attach the proposed pleading." Without a copy of the proposed amended complaint, this Court and Defendant cannot properly consider the factual and legal basis for the amendment.

In addition, Plaintiff's Motion for Leave to Amend should be denied because Plaintiff fails to explain why he did not assert facts to dispute immunity in the original Complaint, and fails to explain why it is necessary to amend to assert facts that he has already set forth in his Suggestions in Opposition to Defendant's Motion to Dismiss. See Plaintiff's Suggestions in Opposition, (Document 10). The impetus for Plaintiff's request to amend is apparently the fact that Defendant's Motion to Dismiss established that Plaintiff did not allege waiver or other exception to Eleventh Amendment immunity and, therefore, Plaintiff could not meet his burden of establishing federal court jurisdiction. See Defendant's Motion to Dismiss, page 3 (Document 5). However, in response to the Motion to Dismiss, Plaintiff filed Suggestions in Opposition asserting numerous factual statements and arguments focused on preventing the application of the Eleventh Amendment. See Plaintiff's Suggestions in Opposition, (Document 10). Accordingly, it is not necessary for the court to allow an amendment to the Complaint in order for Plaintiff to assert the facts that have already been raised in the Suggestions in Opposition for this Court's consideration in ruling on the Motion to Dismiss. See, e.g., Becker v. Univ. of Neb., 191 F.3d 904, 908 (8th Cir.1999) (affirming denial of motion for leave to amend complaint where the allegations were repetitive and arose before the filing of his original complaint.)

Further, Plaintiff's request to amend to "possibly" add a federal claim is not ripe and should not be considered by this Court. "A claim is not ripe for adjudication if it rests upon contingent

future events that may not occur as anticipated, or indeed may not occur at all.” Texas v. United States, 523 U.S. 296, 300, 118 S. Ct. 1257, 1259, 140 L. Ed. 2d 406 (1998) (citation omitted).

Plaintiff admits that he does not know if he has an actionable federal claim, or if he asserted a federal claim whether it would be barred by the applicable statute of limitations. See Plaintiff’s Motion for Leave to Amend, ¶ 3-4 (Document 11.) It is not in the interests of justice to allow Plaintiff to attempt to delay a ruling on Defendant’s Motion to Dismiss due to a speculative, contingent future claim. Accordingly, this Court should deny Plaintiff’s Motion for Leave to File an Amended Complaint.

WHEREFORE, for the foregoing reasons, Plaintiff’s Motion for Leave to File an Amended Complaint should be DENIED and Defendant should be granted such further relief as the Court deems just and proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2018, I filed the foregoing using the Court's electronic filing system, and that a copy of the foregoing was served via the Court's electronic filing system upon George Smith, plaintiff's counsel of record.

/s/ Emily W. Little
Attorney for Defendant